

GENERAL ORDER #22



ADMINISTRATIVE PROCEDURES FOR ELECTRONIC CASE FILING

S/

Chief Judge Frederick J. Scullin, Jr.

DATED: Friday March 5, 2004

**THE NORTHERN DISTRICT OF NEW YORK'S
ADMINISTRATIVE PROCEDURES FOR ELECTRONIC CASE FILING**

1. Definitions.

- 1.1 “All documents” means all documents traditionally filed with the Court excluding the hearing record in social security appeals and state court records submitted with a respondent’s answer to a habeas corpus petition.
- 1.2 “Traditionally Filed Document” means a document or pleading presented to the Court for filing in paper or other non-electronic, tangible format.
- 1.3 “Electronic Filing” means uploading a pleading or document directly from the Filing User’s computer using the Court’s Internet-based Electronic Filing System (the “System”) to file that pleading or document in the Court’s case file.
- 1.4 “Filing User” is an individual who has a court-issued login and password to file documents electronically.
- 1.5 “Notice of Electronic Filing” means the notice that the System generates which establishes the electronic receipt of a document filed electronically with the System.
- 1.6 “Portable Document Format” or “.pdf format” means a type of document formatting that can be created with almost any word processing program. Scanned documents can also be converted to .pdf format. For information on converting word processing documents into .pdf text documents, users should visit the Court’s web page at www.nynd.uscourts.gov or the websites of .pdf vendors such as <http://www.adobe.com/products/acrobat> or <http://www.fineprint.com/>.
- 1.7 “.pdf scanned document” means a document converted into .pdf format by means of a document scanner. “.pdf scanned documents” differ from “.pdf text documents” in that “.pdf scanned documents” are essentially pictures of the original documents and do not allow for text searches within those documents.
- 1.8 “.pdf text document” means a document converted from a word processing program (i.e. WordPerfect, Microsoft Word, etc.) directly into .pdf format without the use of a scanner. A “.pdf text document” is the preferred format for filing documents with the Court because a “.pdf text document” is considerably smaller in size and allows for text searches within that document.

2. Scope of Electronic Filing.

After January 1, 2004, all documents submitted for filing by attorneys admitted to practice in the Northern District of New York shall be filed electronically using the System or shall be scanned and uploaded to the System, **no matter when a case was originally filed**, unless otherwise permitted by these Administrative Procedures or unless otherwise authorized by the assigned judge. An attorney who is not a Filing User by January 1, 2004, must show to the assigned judge good cause to file and serve pleadings and other papers in the traditional manner. If the Court grants permission to file a document traditionally, the attorney must submit the documents for filing to the Clerk's Office on 3.5" disks in .pdf format.

2.1 Exceptions and/or Waivers from Mandatory Electronic Filing.

The following types of cases and/or documents **are not** required to be filed electronically:

1. Initial papers commencing an action must be filed in the traditional manner. Documents submitted in this manner must be accompanied by a 3.5" disk or CD-ROM containing the document in .pdf format. In a case removed to this Court, parties are required to provide electronic copies of all documents previously filed in state court.
2. Any document filed by a party proceeding *pro se*. (See Section 12.1 for procedural details)
3. Sealed documents, sealed cases, documents for *in camera* review, documents lodged with the Court, ex parte documents, confidential agreements, Qui Tam actions and Grand Jury material and warrants must be filed traditionally. (See Section 12.2 for further information on the filing of the above-referenced documents).
4. Social security transcripts. (See Section 11 for procedural details regarding filing papers in social security cases)
5. State court records submitted with a respondent's answer to a habeas corpus petition.
6. Discovery: In accordance with Local Rule 26.2, parties shall not file discovery provided, however, that discovery material to be used at trial or in support of any motion, including a motion to compel or for summary judgment, shall be filed electronically with the Court prior to the trial or with the motion. Any motion pursuant to Rule 37 of the Federal Rules of Civil Procedure shall be accompanied by the electronically filed discovery materials to which the motion relates if those materials have not previously been filed with the Court.

7. **Transport Orders:** All orders requesting an incarcerated individual be transported that are signed by a judicial officer of the Northern District of New York shall be filed traditionally. These Orders will not be filed with the case or uploaded to the docket but rather will be processed in accordance with the procedures promulgated by the Clerk of Court.

The Court may deviate from these Administrative Procedures in specific cases, without prior notice, if deemed appropriate in the exercise of discretion, considering the need for the just, speedy, and inexpensive determination of matters pending before the Court. The Court may also amend these Administrative Procedures at any time without prior notice. Updates to these Administrative Procedures will be immediately posted to the Court's web page at www.nynd.uscourts.gov.

3. Eligibility, Registration and Passwords.

3.1 Eligibility

An attorney admitted to practice and in good standing in the Northern District of New York must register as a Filing User, unless otherwise authorized by these Administrative Procedures or the assigned judge. (See Section 2 for further information). To be in good standing, an attorney must meet the requirements in Local Rule 83.1, including timely payment of the biennial assessment imposed in Local Rule 83.1(a)(5).¹

3.2 Registration

An attorney shall register as a Filing User by completing an E-filing Registration Form, a copy of which can be obtained from the Court's web page. Registration as a Filing User constitutes consent to electronic service of all documents as provided in these Administrative Procedures in accordance with the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.

All signed original E-filing Registration Forms shall be mailed or delivered to the Clerk, U.S. District Court, c/o E-filing Registration, James Hanley Federal Building, P.O. Box 7367, 100 South Clinton Street, Syracuse, NY 13261. The Court anticipates upgrading its system to allow for on-line E-filing Registration. Please consult the Court's web page at www.nynd.uscourts.gov/cmecf/ for upcoming upgrades regarding the availability of this feature.

To ensure that the Clerk's Office has correctly entered a registering attorney's Internet e-mail address in the System, the Clerk's Office will send the attorney an Internet e-mail message after receiving his or her E-filing Registration Form. Upon confirmation that the e-mail address is valid, the Clerk's Office will transmit the attorney's password to that address.

¹ L.R 83.1(a)(5) waives the biennial registration fee for all attorneys employed by federal, state and local public sector entities.

An attorney whose e-mail address, mailing address, telephone or fax number has changed from that stated in the original E-filing Registration Form shall immediately file a notice of a change of address and serve a copy of the notice on all other parties. ** Please note, in the near future the Court anticipates upgrading its system to allow attorneys to change this information on-line. Please consult the Court's web page for upcoming upgrades.**

3.3 Passwords.

Within ten days after receiving their initial password, attorneys must select a new password of their own choosing. Please consult the Court's CM/ECF Users Manual for detailed instructions on changing passwords. (See www.nynd.uscourts.gov/cmecf/).

The password permits the attorney to participate in the electronic retrieval and filing of pleadings and other papers. Once registered, the attorney shall be responsible for all documents filed with his or her password. Documents filed under an attorney's login and password shall constitute that attorney's signature for purposes of the Local and Federal Rules of Civil and Criminal Procedure, including but not limited to Rule 11 of the Federal Rules of Civil Procedure.

No attorney shall knowingly permit or cause to permit his or her password to be used by anyone other than an authorized employee of his or her office. If, at any time, an attorney believes that the security of an existing password has been compromised, the attorney must change his or her password immediately. In addition, the attorney shall immediately notify the Court via e-mail at the following address www.nynd.uscourts.gov of his or her belief that the password has been compromised.

4. Electronic Filing and Service of Documents

4.1 Filing defined.

Electronic transmission of a document to the System in accordance with these Administrative Procedures, together with the transmission of a Notice of Electronic Filing from the Court, constitutes filing of the document for all purposes of the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure and the Local Rules of this Court and constitutes entry of the document on the docket kept by the Clerk's Office under Rules 58 and 79 of the Federal Rules of Civil Procedure and Rules 49 and 55 of the Federal Rules of Criminal Procedure. E-mailing a document to the Clerk's Office or to the assigned judge shall not constitute "filing" of the document.

4.2 Complaints, Civil Cover Sheets and Summonses.

Currently the Clerk's Office will only accept complaints, civil cover sheets and summonses sent by United States mail or delivered in person to the Clerk's Office. The complaint, civil cover sheet and summons must be submitted to the Court on a 3.5" disk as either a .pdf scanned document or a .pdf text document (if possible, the complaint should be a .pdf text document). The civil cover sheet and summonses are available in electronic format from the Court's web page at www.nynd.uscourts.gov. The Clerk's Office will open the case and upload the documents to the System.

4.3 Time of Filing.

A document will be deemed timely filed if electronically filed prior to midnight Eastern Time. However, if the time of day is of the essence, the assigned judge may order that the document be filed by a time certain.

4.4 Attachments and Exhibits.

A Filing User must submit in electronic form all documents referenced as exhibits or attachments in accordance with the Court's CM/ECF Users Manual, unless the Court otherwise orders. A Filing User shall submit as exhibits or attachments only those excerpts of the referenced documents that are directly germane to the matter under the Court's consideration. Excerpted material must be clearly and prominently identified as such. Filing Users who file excerpts of documents as exhibits or attachments under these Administrative Procedures do so without prejudice to their right to timely file additional excerpts or the complete document. Responding parties may also timely file the complete document or additional excerpts that they believe are directly germane to the matter under the Court's consideration.

4.5 Large Documents.

Due to the length of time it takes to download a large file, documents larger than two megabytes (approximately forty-five pages of .pdf text) must be filed electronically in separate two-megabyte segments. For more information on the electronic filing of large documents, please consult the Court's CM/ECF Users Manual, which is available on the Court's web page at www.nynd.uscourts.gov/cmecf/.

A party who believes a document is too lengthy to electronically image, *i.e.*, "scan," may contact the Clerk's Office for permission to file that document conventionally. If the Clerk's Office grants permission to conventionally file the document, the filing party shall electronically file a notice of conventional filing for the documents. A form notice for this purpose can be obtained from the Court's web page at www.nynd.uscourts.gov. Exhibits submitted conventionally shall be served on other parties as if they were not subject to these Administrative Procedures. For a list of hints and tips for scanning large documents, please consult the Court's web page at www.nynd.uscourts.gov.

4.6 Legibility.

It shall be the Filing User's responsibility to verify the legibility of scanned documents before filing them electronically with the Court.

4.7 Color Documents.

Since documents scanned in color or containing a graphic take much longer to upload, filing parties must configure their scanners to scan documents at 200 dpi and in black and white rather than in color. Documents appearing in color in their original form, such as color photographs, may be scanned in color and then uploaded to the System.

4.8 Document Retention.

The Filing User shall retain all documents containing original signatures of anyone other than the Filing User for a period of not less than sixty days after all dates for appellate review have expired.

5. Service.

5.1 Service of Process.

Rule 5(b) of the Federal Rules of Civil Procedure and Rule 49(b) of the Federal Rules of Criminal Procedure do not permit electronic service of process for purposes of obtaining personal jurisdiction, i.e. Rule 4 Service. Therefore, service of process must be effected in the traditional manner.

5.2 Service of Electronically Filed Documents.

Whenever a pleading or other paper is filed electronically in accordance with these Administrative Procedures, the System shall generate a "Notice of Electronic Filing" to the filing attorney and any other attorney who is a Filing User and has requested electronic notice in that case.²

If the recipient is a Filing User, the System's e-mailing of the "Notice of Electronic Filing" shall be the equivalent of service of the pleading or other paper by first class mail, postage prepaid.

² To determine whether another party is a Filing User, the filing party can select the System's "Utilities" category, and then click on "Mailing Information for a Case" on the pull-down menu. The filing party then enters the case number and the System information will appear, stating whether or not the filer must mail a copy of the documents or if the System will electronically generate a "Notice of Electronic Filing" to a particular party

5.3 Certificates of Service.

A certificate of service on all parties entitled to service or notice is still required when a party files a document electronically. The certificate must state the manner in which service or notice was accomplished on each party so entitled. A sample certificate of service is available on the court's web page at www.nynd.uscourts.gov.

5.4 Service of Electronically Filed documents upon non-Filing Users.

A party who is not a Filing User of the System is entitled to a paper copy of any electronically- filed pleading, document, or order. The filing party must therefore provide the non-Filing User with the pleading or document according to the Federal Rules of Civil Procedure.

5.5 Time to Respond Under Electronic Service.

In accordance with Rule 6(e) of the Federal Rules of Civil Procedure and Rule 45©) of the Federal Rule of Criminal Procedure, service by electronic means is treated the same as service by mail for purposes of adding three days to the prescribed period to respond.

6. Signatures

6.1 Attorney Signatures

Documents filed under an attorney's login and password shall constitute that attorney's signature for purposes of the Local and Federal Rules of Civil and Criminal Procedure, including but not limited to Rule 11 of the Federal Rules of Civil Procedure.

A pleading or other document requiring an attorney's signature shall be signed in the following manner, whether filed electronically or submitted on disk to the Clerk's Office: "s/ (attorney name)." The correct format for an attorney signature is as follows:

s/ Judith Attorney
Judith Attorney Bar Number: 12345
Attorney for (Plaintiff/Defendant)
ABC Law Firm
123 South Street
Albany, NY 12207
Telephone: (518) 555-1234
Fax: (518) 555-5678
E-mail: judith_attorney@law.com

6.2 Non-Attorney Signature.

If an original document requires the signature of a non-attorney, the Filing User may scan the original document containing the original signature(s), then electronically file it on the System. Alternatively, the Filing User may convert the document into .pdf text format and submit the document using "s/" for the signature of the non-attorney.

Please note, the Filing User shall retain all documents containing original signatures of anyone other than the Filing User for a period of not less than sixty days after all dates for appellate review have expired. Should the authenticity of the document be questioned, the presiding judge may require the Filing User to produce the original document.

6.3 Multiple Signatures.

A document requiring signatures of more than one party must be filed electronically either by (1) submitting a scanned document containing all necessary signatures; (2) representing the consent of the other parties on the document; or (3) in any other manner approved by the Court.

6.4 Authenticity Disputes.

A non-filing signatory or party who disputes the authenticity of an electronically-filed document with a non-attorney signature or the authenticity of the signature on that document must file an objection to the document within ten days of receiving the Notice of Electronic Filing, or, if a non-Filing User, within ten days of receiving the document.

7. Fees Payable to the Clerk.

Any fee required for filing a pleading or paper in this Court is payable to the Clerk of the Court by credit card, check, money order, or cash. The Clerk's Office will document the receipt of fees on the docket with a text-only entry. The Court will not maintain electronic billing or debit accounts for attorneys or law firms.

8. Orders.

The assigned judge or the Clerk's Office shall electronically file all signed orders. Upon filing, the System will send a "Notice of Electronic Filing" to all Filing Users in that case. The Clerk's Office will send a paper copy of the Order along with the "Notice of Electronic Filing" to non-Filing Users in the case. Any order signed electronically has the same force and effect as if the judge had affixed the judge's signature to a paper copy of the order and the order had been entered on the docket conventionally.

8.1 Text-Only Orders

The assigned judge or the Clerk's Office, if appropriate, may grant routine orders by a text-only entry upon the docket. In such cases, no .pdf document will issue; the text-only entry shall constitute the Court's only order on the matter. These text-only orders shall have the same force and effect as if the judge had affixed the judge's signature to a paper copy of the order and the order had been entered on the docket conventionally. The System will generate a "Notice of Electronic Filing" as described in Section 1.5 of these Administrative Procedures. The Clerk's Office will send a paper copy of the text-only order to non-Filing Users in the case.

9. Correcting Docket Entries.

Once a document is submitted and becomes part of the case docket (i.e., the Filing Users receives a Notice of Electronic Filing), only the Clerk's Office can make corrections to that docket entry. In other words, the System will not permit the filing party to make changes to the document(s) or docket entry filed in error once the transaction has been accepted. Please consult the Court's CM/ECF Users Manual for detailed instructions on correcting docket errors. (See www.nynd.uscourts.gov/cmecf/). A document incorrectly filed in a case may be the result of posting the wrong .pdf document to a docket entry or selecting the wrong document type from the menu or entering the wrong case number and not catching the error before the transaction is completed. **The filing party should not attempt to refile the document.**

As soon as possible after an error is discovered, the filing party should contact the Clerk's Office with the case number and document number for which it is requesting a correction. If appropriate, the Court will make an entry indicating that the document was filed in error. The Clerk's Office will notify the filing party *if* the document needs to be refiled.

10. Technical Failures.

10.1 Technical Failure of the System.

The Clerk's Office shall deem the Court's CM/ECF site to be subject to a technical failure on a given day if the site is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after 10:00 a.m. that day. Known systems outages will be posted on the Court's web page, if possible.

If the Court's CM/ECF site experiences a technical failure, a Filing User may submit documents to the Court that day in an alternate manner provided that the documents are accompanied by the Filing User's affidavit stating that the Filing User attempted to file electronically at least two times in one hour increments after 10:00 a.m. that day. The following methods are acceptable alternate means for filing documents in case of a technical failure:

- A) via electronic mail in a PDF attachment sent to the e-mail address for technical failures (See www.nynd.uscourts.gov/cmecf/); or
- B) in person, by bringing the document to the Clerk's Office on paper accompanied by a 3.5" disk which contains the document in .pdf format.

A Filing User, whose filing is untimely as the result of a technical failure of the Court's CM/ECF site, may seek appropriate relief from the Court. However, Filing Users are cautioned that, in some circumstances, the Court lacks the authority to grant an extension of time to file (e.g. Rule 6(b) of the Federal Rules of Civil Procedure).

10.2 Technical Failure of the Filing User's System.

Problems with the Filing User's system, such as phone line problems, problems with the Filing User's Internet Service Provider ("ISP"), or hardware or software problems, will not constitute a technical failure under these Administrative Procedures nor excuse an untimely filing. A Filing User who cannot file documents electronically because of a problem on the Filing User's system must file the documents conventionally along with an affidavit explaining the reason for not filing the documents electronically.

11. Public Access and Privacy Concerns.

11.1 Social Security and Criminal Case Information.

The public may retrieve information from the System at the Court's Internet site by obtaining a PACER login and password. See Section 13.2 for more information regarding PACER. In accordance with the policy that the Judicial Conference has established, neither a social security case nor a criminal case is available for public view over the Internet. In social security cases, only counsel in the case may retrieve certain documents. Docket sheets in criminal cases are available to a person with PACER access, but only counsel for the government and the defendant may retrieve documents electronically in a criminal case.

11.2 Sensitive Information

As the public may access certain case information over the Internet through the Court's Internet site, sensitive information should not be included in any document filed with the Court unless such inclusion is necessary and relevant to the case. In accordance with Local Rule 8.1, if sensitive information must be included, certain personal and identifying information, such as social security numbers, financial account numbers, dates of birth and the names of minor children, shall be redacted from the pleading before filing, whether it is filed traditionally or electronically. Please consult Local Rule 8.1 for further details regarding the redaction of these personal identifiers. In addition, caution must be exercised when filing documents that contain the following:

- a) personal identifiers such as a driver's license number;
- b) medical records, treatment and diagnosis;
- c) employment history;
- d) individual financial information; and
- e) proprietary or trade secret information.

Counsel are strongly urged to share these rules regarding sensitive information with all clients so that an informed decision about the inclusion, redaction and/or exclusion of certain materials may be made. It is the sole responsibility of counsel and the parties to be sure that pleadings and other papers comply with the rules and orders of this Court requiring redaction of personal identifiers. Counsel's failure to redact personal identifiers and/or to include irrelevant personal information in a document filed with the Court may subject counsel to the Court's full disciplinary and remedial power, including sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure.

12. Documents that will continue to be traditionally filed.

12.1 Pro Se filers

Pro se filers shall file paper originals of all complaints, pleadings, motions, affidavits, briefs, and other documents which must be signed or which require either verification or an unsworn declaration under any rule or statute. The Clerk's Office will scan these original documents into an electronic file in the System but will also maintain a paper file.

Pro se filers may also provide the Court with a 3.5" disk containing their documents as either .pdf text documents or .pdf scanned documents.

12.2 Sealed Documents, Sealed Cases, Documents Presented for In Camera Review, and Documents Lodged with the Court.

If a party wishes to file one of the above listed documents, the party must file a motion or application to achieve the desired action. The motion or application, along with the documents the party is requesting to be sealed or lodged with the Court, shall be filed in a traditional manner in a sealed envelope marked "sealed." If the Court grants the motion or application, the assigned judge will enter electronically the order authorizing the filing of the documents in the appropriate manner (i.e. under seal, lodged with the Court, etc.). The Clerk's Office will then file the documents in the appropriate manner.

If the Court denies the motion or application, the Court will issue an order that directs the parties to file the documents electronically.

13. Public Access to the System Docket.

13.1 Public Access at the Court

Electronic access to the electronic docket and documents filed in the System is available for viewing to the public at no charge at the Clerk's Office during regular business hours. A copy fee for an electronic reproduction is required in accordance with 28 U.S.C. § 1930.

13.2 Internet Access.

Remote electronic access to the System for viewing purposes is limited to subscribers to the Public Access to Court Electronic Records ("PACER") system. The Judicial Conference of the United States has ruled that a user fee will be charged for remotely accessing certain detailed case information, such as filed documents and docket sheets in civil cases.³ Application forms and information on PACER can be found on the Court's web page at www.nynd.uscourts.gov

13.3 Conventional Copies and Certified Copies.

Conventional copies and certified copies of electronically filed documents may be purchased at the Clerk's Office. The fee for copying and certifying will be in accordance with 28 U.S.C. § 1914.

³ According to a memorandum from the Administrative Office of the United States Courts dated April 9, 2002, non-judiciary CM/ECF users will be charged a fee of seven cents per page starting on July 1, 2002, to access electronic data such as docket sheets and case documents obtained remotely through the PACER system. A cap of thirty pages per document has been approved. The access fee does not apply to official recipients of electronic documents, i.e., parties legally required to receive service or to whom service is directed by the filer in the context of service under the Federal Rules of Civil Procedure. Filing Users will receive the initial electronic copy of a document free to download as they see fit, but if they remotely access the document again, they will be charged seven cents a page.